

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #6	CCRB Case #: 201503232	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/31/2014 1:30 PM	Location of Incident: Herkimer Street and Kane Place	Precinct: 81	18 Mo. SOL 4/30/2016	EO SOL 4/30/2016	
Date/Time CV Reported Fri, 04/24/2015 9:34 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 04/24/2015 9:34 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Romando Julien	08171	949152	081 PCT
2. POM Mark Xylas	11251	948160	081 PCT
3. POM Ryan Galvin	08096	948997	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Erik Powers	05297	944907	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Romando Julien	Abuse: PO Romando Julien stopped § 87(2)(b)	
B.POM Ryan Galvin	Abuse: PO Ryan Galvin stopped § 87(2)(b)	
C.POM Mark Xylas	Abuse: PO Mark Xylas stopped § 87(2)(b)	
D.POM Romando Julien	Abuse: PO Romando Julien detained § 87(2)(b)	
E.POM Ryan Galvin	Abuse: PO Ryan Galvin detained § 87(2)(b)	
F.POM Mark Xylas	Abuse: PO Mark Xylas detained § 87(2)(b)	

### Case Summary

On April 24, 2015, § 87(2)(b) filed this complaint on behalf § 87(2)(b) her son, with the CCRB via the online website. § 87(2)(b) was a non-witnessing complainant. The complaint was filed six months after the incident date.

On October 31, 2014, at approximately 2:09 p.m., PO Romando Julien, PO Ryan Galvin, and PO Mark Xylas stopped § 87(2)(b) in front of 908 Herkimer Street, in Brooklyn (**Allegation A, B, and C**). Based on the officers' observations and that § 87(2)(b) fit the description of a wanted suspect, § 87(2)(b) was placed under arrest. § 87(2)(b) was brought back to the stationhouse where he remained for five or six hours before being released on a voided arrest (**Allegation D, E, and F**). § 87(2)(b) was neither summonsed nor given a desk appearance ticket (Board Review 06).

### Mediation, Civil and Criminal Histories

This case is unsuitable for mediation § 87(2)(b)  
(Board Review 13). § 87(2)(b), § 87(2)(c)

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 01).
- This is § 87(2)(b)'s first CCRB complaint (Board Review 02).
- PO Julien has been a member of the NYPD for five years and has one other complaint that is currently still pending. § 87(2)(g)
- PO Galvin has been a member of service for five years and has had 14 prior CCRB allegations involving five cases. There was one stop allegation that was exonerated.
- PO Xylas has been a member of the NYPD for six years and has had 20 prior CCRB allegations involving nine cases with one substantiated allegation. § 87(2)(g)

### Potential Issues

§ 87(2)(b) had provided the nickname, § 87(2)(b)", for the possible witness to the incident during his CCRB interview. However, he did not have any contact information for this individual and did not know her full name. § 87(2)(a) Gen.Mun. §50-H(3)

However, in § 87(2)(b)'s CCRB testimony, "§ 87(2)(b) or § 87(2)(b)" would have only witnessed the officers handcuffing him and not been able to witness anything prior (Board Review 06). Therefore, § 87(2)(b) or § 87(2)(b)" was not contacted in regards.

### Findings and Recommendations

#### Allegations not pleaded

#### Abuse of Authority: Question-

PO Xylas admitted that he asked § 87(2)(b) what was in his pocket on the suspicion § 87(2)(b) carrying a weapon (Board Review 12). However, § 87(2)(b) did not allege in his CCRB testimony that any officers asked about the contents inside his pocket (Board Review 06).

§ 87(2)(g)

**Allegation A –Abuse of Authority: PO Romando Julien stopped** § 87(2)(b)

**Allegation B –Abuse of Authority: PO Ryan Galvin stopped** § 87(2)(b)

**Allegation C –Abuse of Authority: PO Mark Xylas stopped** § 87(2)(b)

**Allegation D –Abuse of Authority: PO Romando Julien detained** § 87(2)(b)

**Allegation E –Abuse of Authority: PO Ryan Galvin detained** § 87(2)(b)

**Allegation F –Abuse of Authority: PO Mark Xylas detained** § 87(2)(b)

It is undisputed that PO Julien, PO Galvin, and PO Xylas stopped and arrested § 87(2)(b) in front of 908 Herkimer Street (Board Review 08).

In § 87(2)(b) CCRB testimony, he was en route to pick up his sister on Ralph Avenue. During the incident, § 87(2)(b) was wearing a blue/black hoodie, blue sweatpants, and grey sneakers. § 87(2)(b) is 5'11" tall, weighs 140 pounds, slim body build, with a short black "Caesar" hair style (Board Review 06). After walking for approximately three minutes he was stopped by PO Julien, PO Galvin, and PO Xylas in an unmarked police vehicle. § 87(2)(b) was ordered to take his hands out of his pockets. § 87(2)(b) complied. § 87(2)(b) stated that he had his mother's cell phone and his keys in his pocket. The officers subsequently repeatedly requested for § 87(2)(b) name and ID. § 87(2)(b) refused to provide his name or ID to the officers at the scene. He was subsequently arrested and brought back to the stationhouse. At the stationhouse, the officers told § 87(2)(b) that he looked like an individual that might have been involved in a shooting and they presented the photo of the individual to § 87(2)(b). § 87(2)(b) was kept in the stationhouse for five or six hours and was released without a summons or desk appearance ticket (Board Review 06). § 87(2)(a) Gen.Mun. §50-H(3)

PO Julien, PO Galvin, and PO Xylas provided consistent CCRB testimonies. They confirmed that the Kingston Police Department in New York had visited their command on a previous occasion to inform them that an individual who was wanted for being involved in a shooting in Kingston may have been hiding out in the confines of the 81<sup>st</sup> Precinct (Board Review 10-12). The Kingston Police Department provided a photo and a physical description of the wanted suspect to the officers (Board Review 04). PO Julien, PO Galvin, and PO Xylas acknowledged that they had seen the photo and were in possession of the photo (Board Review 10-12). During the incident, the officers were on regular patrol when they observed § 87(2)(b) matching the description of the wanted suspect from Kingston and appeared to have a big bulge inside in his front hoodie pocket. The two aforementioned observations led to the officers stopping § 87(2)(b). All of the officers interviewed confirmed that they approached § 87(2)(b) for investigative purposes to determine whether or not he was the wanted suspect from Kingston and to ensure that the bulge inside his hoodie pocket was not a weapon. Throughout the stop, all of the officers issued several requests for § 87(2)(b) to remove his hands from his pocket and provide his name and ID. However, § 87(2)(b) refused to comply with each of their commands and was loud and irate. PO Galvin and PO Xylas noted that a crowd formed due to § 87(2)(b) aforementioned behavior (Board Review 11 and 12). As a result, the officers agreed that § 87(2)(b) was going to be under arrest for further investigation and for being disorderly. § 87(2)(b) was subsequently placed in

handcuffs. After § 87(2)(b) hands were pulled out of his pockets to be handcuffed, the bulge was no longer present (Board Review 10-12). PO Galvin and PO Xylas stated that the bulge was formed by § 87(2)(b) key/keychain when § 87(2)(b) hands were removed from his pockets to be handcuffed (Board Review 11 and 12). PO Julien stated that the bulge was just § 87(2)(b) hands and once they were removed, the bulge was no longer present (Board Review 10).

Back at the stationhouse, the officers sent a photo to Kingston Police Department to confirm whether § 87(2)(b) was the wanted individual they were looking for. After contact with Intel and the Kingston Police Department it was determined that § 87(2)(b) was not the suspect. However, Kingston Police Department indicated that § 87(2)(b)'s physical appearance was a close match to the suspect. Additionally, § 87(2)(b) had provided his name at some point in the stationhouse. § 87(2)(b) was subsequently released after the confirmation (Board Review 10-12).

PO Xylas provided the photo obtained from Kingston Police Department of the wanted individual they were searching for (Board Review 04). As compared with § 87(2)(b) ID photo, he looks closely similar to the individual from the photo provided by PO Xylas (Board Review 03 and 04).

The arrest report prepared by PO Julien corroborated with the officers' testimonies in their observations. Additionally, § 87(2)(b) was charged with "fugitive-other jurisdiction in New York State" (Board Review 08). This charge was in accordance to the officers believing that § 87(2)(b) may have been the wanted suspect of the shooting from Kingston. The arrest was later voided after confirmation that § 87(2)(b) was not the wanted suspect.

The command log listed the charge "loitering/discon" under § 87(2)(b) arrest information (Board Review 09). The command log was prepared by Sgt. Bosch (Board Review 09). All the officers testified that because of § 87(2)(b) demeanor, uncooperative behavior, and the drawing of a crowd would have constituted § 87(2)(b) to be charged with disorderly conduct. However, they did not know why loitering was recorded and they never mentioned that § 87(2)(b) was going to be charged with loitering.

An officer can forcibly stop and detain an individual based on reasonable suspicion that he has committed, is committing, or is about to commit a crime, People v. Debour 40 N.Y.2d 210 (1976) (Board Review 15). Reasonable suspicion is present when there is a close resemblance between a suspect's appearance and that of a suspect in a wanted photo, People v. Reed 106 A.D.3d 673 (App. Div. 1<sup>st</sup> Dept. 2013) (Board Review 16).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

Pod:

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date